

What's in a Contract?

Wordsmithing Service Agreements for Better Outcomes



Michael A. Rodríguez

ACRL/NEC Annual Conference | 2017-05-12

Presenter



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What Is a Contract?



These Are Contracts...



But So Is This...

I Agree ☐

Why Do We Have Contracts?



Vendor Contracts



Flexible + Specific



Vendor Licenses



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LIBLICENSE

Welcome to the LIBLICENSE Project

NEW *The Liblicense Model License, designed to provide a template for libraries negotiating to license digital content, has been updated. The 2014 revision is available on this site on the [Model Licenses](#) page.*

Increasingly, university and research libraries are being inundated with information that has been created in digital format and transmitted and accessed via computers. As the number of collections in digital formats increase exponentially, more and more libraries and information providers are facing a number of unique challenges presented by this relatively new medium.

Chief among these new challenges is crafting agreements with information owners that adequately assure libraries will continue to provide users with comprehensive and timely access to information in digital formats. Because of several unique properties of digital information, agreements that govern the acquisition and maintenance of traditional paper collections are inadequate in the digital information context. Unlike paper materials, digital information generally is not purchased by the library; rather it is licensed by the library from information providers. A license usually takes the form of a written contract or agreement between the library and the owner of the rights to distribute digital information.

As many librarians responsible for collections know all too well, licensing agreements often are complex, lengthy documents filled with arcane and unfamiliar terms such as *indemnity*, *severability*, and *force majeure*. In an effort to assist librarians (and information providers as well) to understand the issues raised by these licensing agreements, we have prepared an *Analysis of Licensing Agreements for Digital Information*. The pages that follow include a

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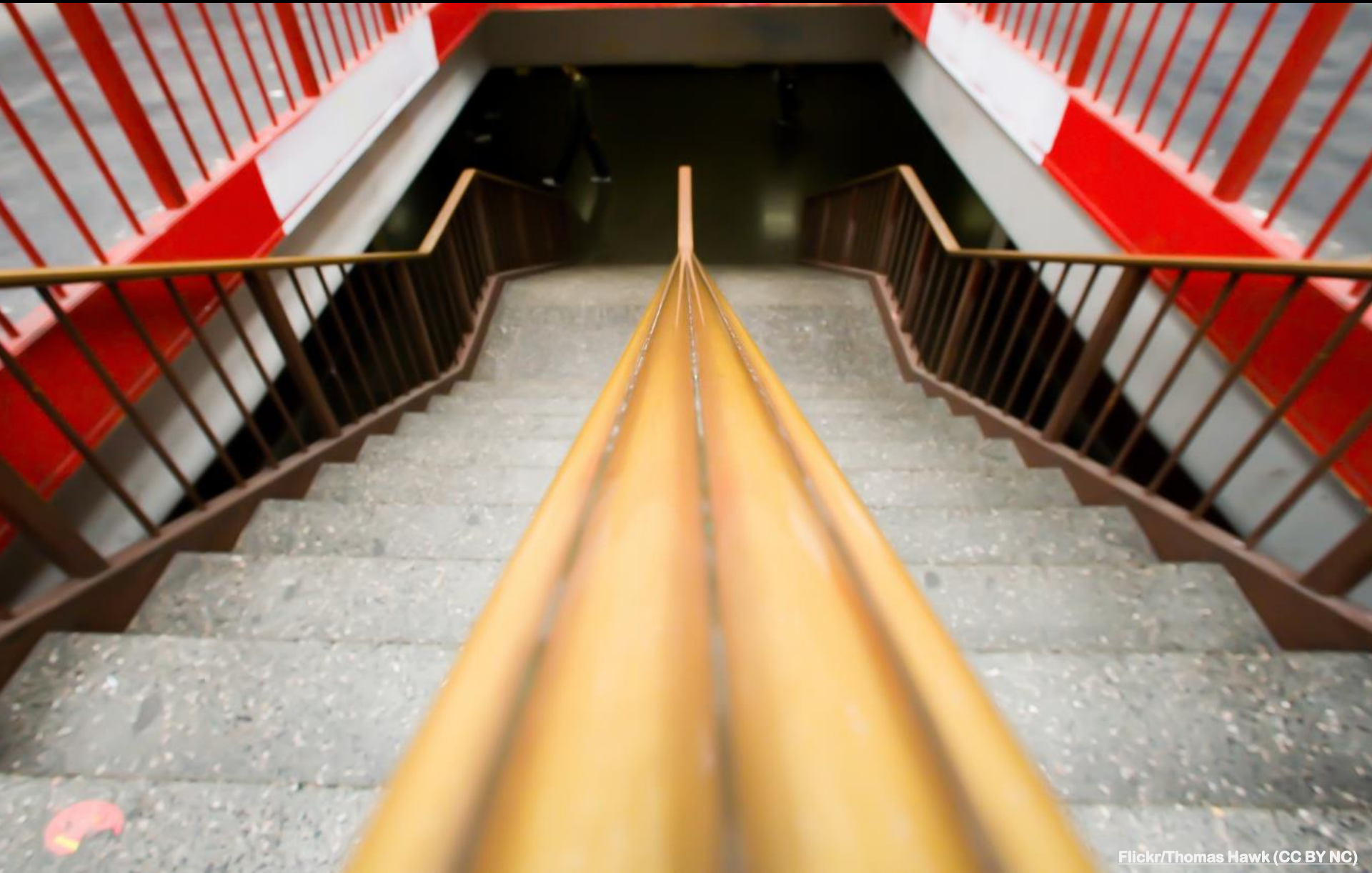
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Perpetual Access

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Data Mining



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Data Mining

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Derrida, Jacques.

Spurs : Nietzsche's styles = Eperons
: les styles de Nietzsche / Jacques
Derrida ; introd. by Stefano Agosti ;
English translation by Barbara Harlow ;
drawings by François Loubrieu. --
Chicago : University of Chicago Press,
1979, c1978.

165 p. ; 24 cm.

English and French on facing pages.
Includes bibliographical references.

1. Nietzsche, Friedrich Wilhelm,
1844-1900. 2. Language and languages--
Style. I. Agosti, Stefano. II. Title

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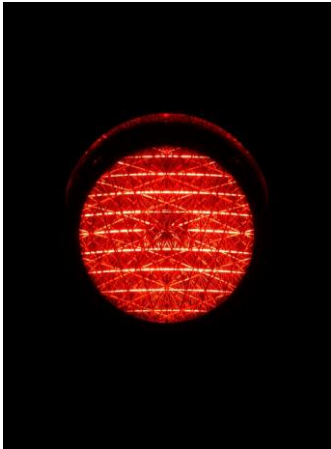
Vendor Contracts



Liability

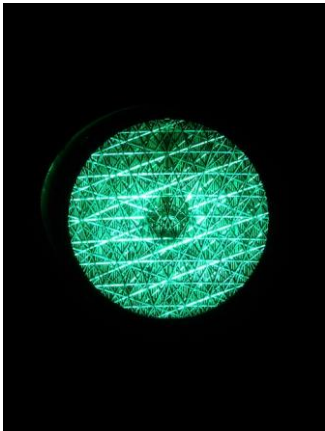


Liability



Customer will take reasonable steps to ensure that Customer's Authorized Users will use the Products according to the terms of this Agreement. The Customer shall indemnify the Company against any claims or losses, including reasonable attorneys' fees, arising in whole or in part from any violation by the Customer.

The Customer assumes the sole responsibility for all use of the Products by its Authorized Users.

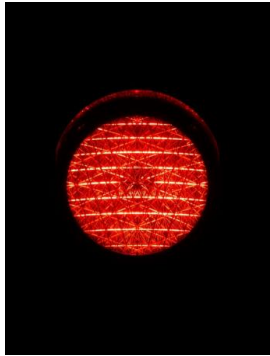


Customer agrees to use reasonable efforts to notify its Authorized Users of the terms of this Agreement and of Authorized Users' responsibility to use the Products according to the terms of this Agreement. Authorized Users are not party to this Agreement. The Provider acknowledges that Customer cannot monitor, control, or proactively enforce the behavior of Authorized Users.

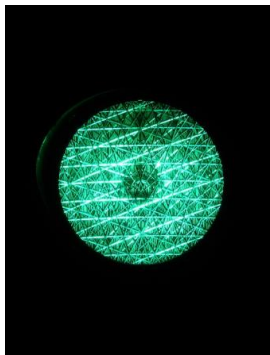
Nondisclosure



Nondisclosure



Each Party may have or may become aware of information regarding the other Party that is confidential or proprietary in nature, including but not limited to information concerning its business, processes, donors or funders, administration and related offices, software, marketing, pricing, formulas, customers, suppliers, vendors, operations, and finances. The Parties agree that they will take all reasonable steps necessary to maintain the confidentiality of any such information during and after the Term. Failure to comply with any provisions in this Article VII on the part of either Party shall entitle the other Party to equitable remedies in addition to all other remedies at law or under this Agreement.

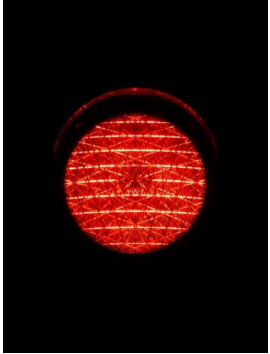


Institution agrees to maintain the confidentiality of pricing information for 3 years from receipt by Institution, except as required by applicable law, court order, or legal process.

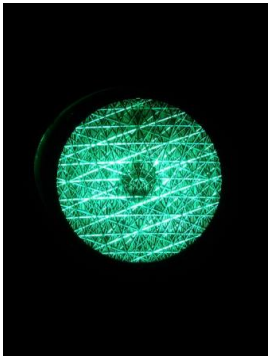
Exclusivity



Exclusivity



The Client agrees to sell its Surplus Equipment exclusively to us during the term of this Agreement. In the event that we elect not to purchase specific Surplus Equipment from the Client, Client is free to offer such Equipment for sale to other parties as it, in its sole discretion, deems appropriate.

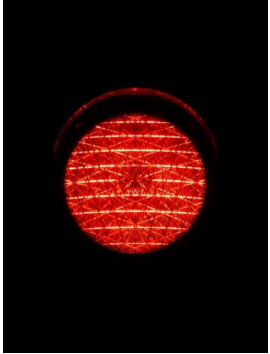


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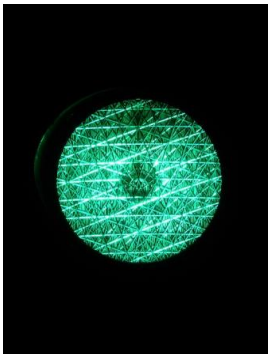
Warranties



Warranties



Software is provided “as is” and is exclusive of any warranty, whether express or implied, including without limitation, any warranties of merchantability, fitness for a particular purpose, or non-infringement.

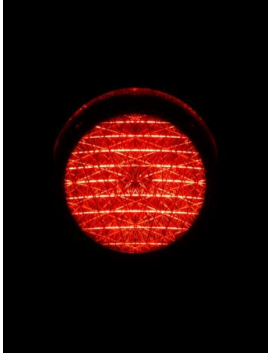


Except as provided for in the Service Level Agreement and documentation attached as Appendix B and incorporated by reference into this contract.

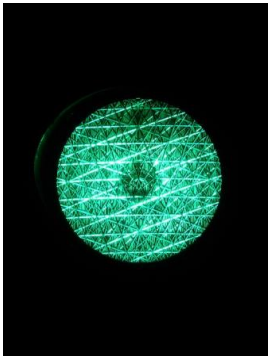
Accountability



Accountability



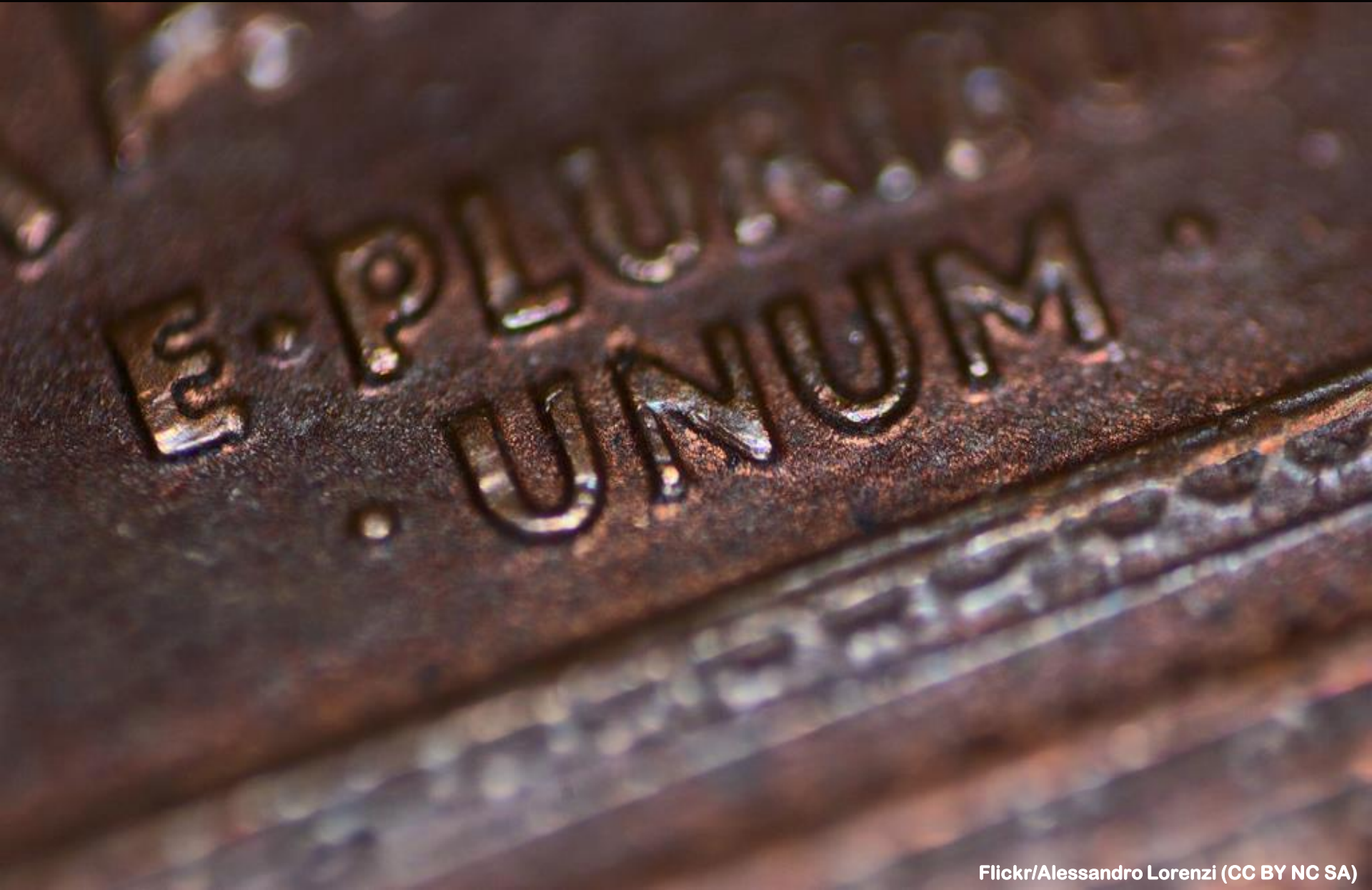
The Firm will use reasonable efforts to ensure the Systems are available during 98% of the Term of this Agreement. Downtimes shall be calculated to exclude outages due to scheduled or emergency maintenance, telecommunications or power disruptions caused by third parties, and any other causes beyond the Firm's reasonable control.



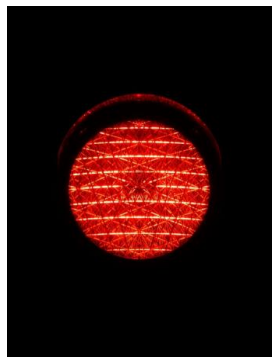
The Firm will use commercially reasonable efforts to ensure the Systems are available 99.9% of the time. In the event that the Firm fails to meet the Uptime Commitment for any rolling 3 month period, Institution shall receive a refund of the Fees for the impacted System paid during those 3 months.

99.8% to 97% Availability	25% Refund
97% to 95% Availability	50% Refund
Below 95% Availability	100% Refund

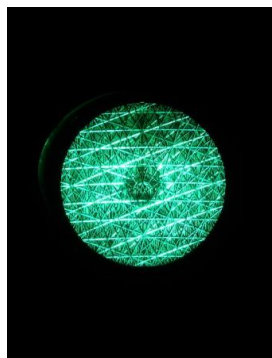
Consortial Memberships



Consortial Memberships

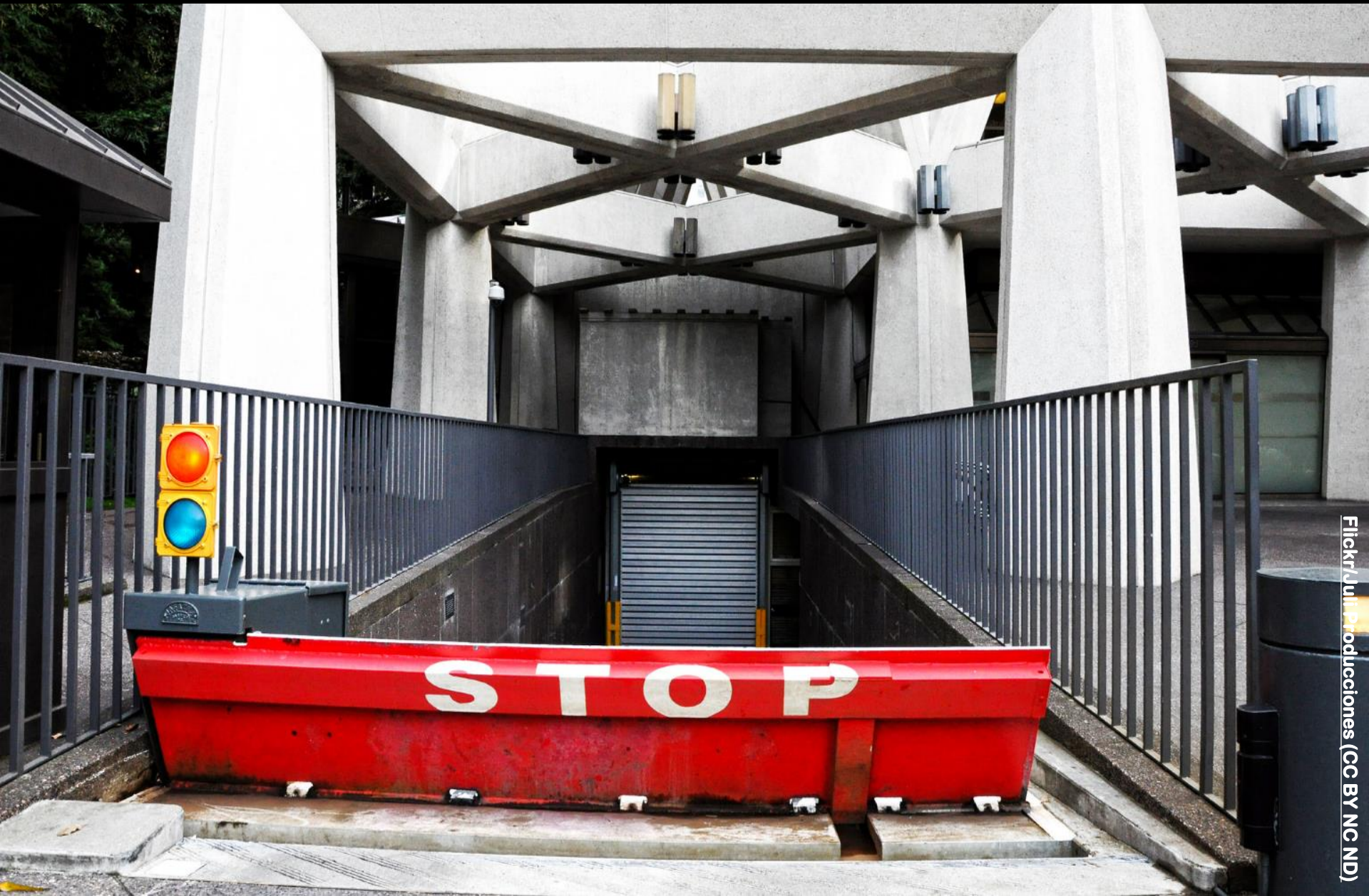


This Agreement provides the University with membership in the XYZ Consortium and its Membership Program.

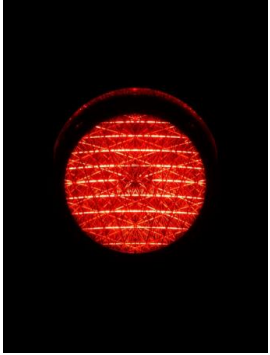


This Agreement governs participation by the University in the XYZ Program. The University may terminate this Agreement and participation in XYZ at any time and for any reason. Effective immediately upon such termination, the University shall cease to have any obligation or liability to the Program or any of its member institutions. Under no circumstances shall the University be held liable or responsible for any obligation of the Program, its Parent Company, or any of their respective member institutions.

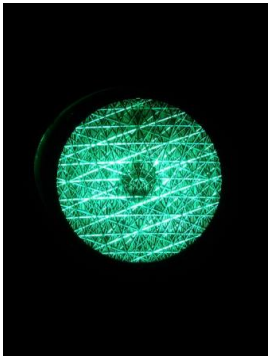
Termination



Termination



Licensor may terminate this Agreement for breach on written notice to Licensee. In the event of early termination for any reason, Licensee shall not be entitled to any refund of fees paid for the Term of the Agreement. On termination for any reason, the Licensee and its Authorized Users shall cease to use and shall immediately delete or destroy any copies of the Licensed Materials in their possession.

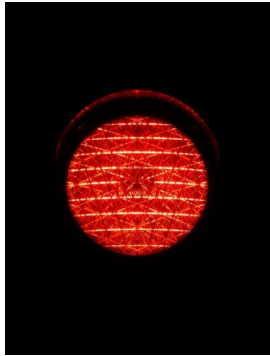


The University may terminate performance of work under the Contract in whole or in part whenever, for any reason, the University shall determine that such termination is in the best interest of the University and/or the State. In the event of alleged breach, Licensor shall promptly notify Licensee in writing and shall provide a cure period of thirty (30) days prior to terminating this Agreement. In the event of early termination, save for material breach by Licensee, Licensee is entitled to a prorated refund of any fees paid.

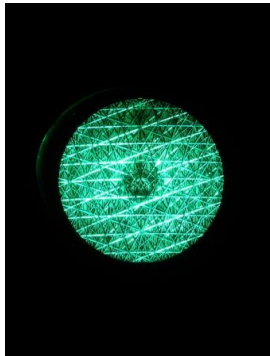
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Terms of Service



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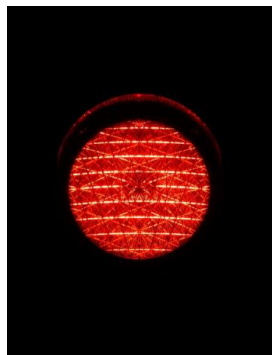


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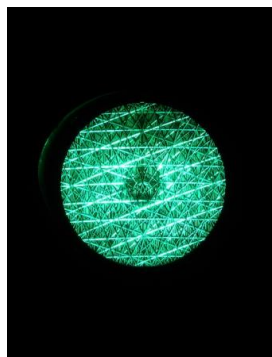
Enforceability



Enforceability



Partners agree to hold the designated items for 15 years from the year of commitment. The Executive Committee will revisit the retention period at least once every five years to determine if circumstances warrant extending or reducing the commitment periods for certain kinds of materials. Retention commitments survive membership.

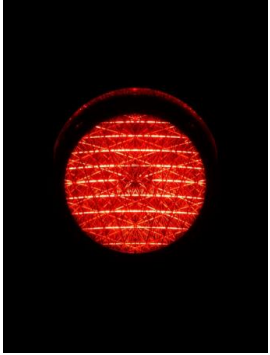


This Memorandum of Understanding is not a contract or an agreement to enter into a contract. This Memorandum is non-binding to all parties of the Memorandum. No liability may arise from this Memorandum to any parties to the MOU. Should a dispute arise from this MOU the parties should first attempt resolution through the Executive Committee.

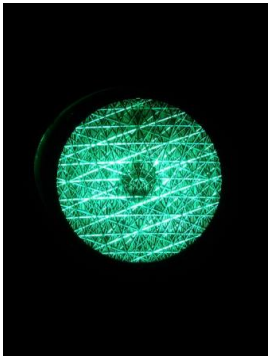
Right to Audit



Right to Audit



During the term of this Agreement, and for up to one (1) year after all Fees due hereunder for use of the Materials cease to be incurred by you, upon reasonable notice to you, we and/or our agents or representatives may audit your compliance with this Agreement. During this time, you shall keep and maintain clear, accurate, and complete books and records. In the event that such audit identifies underpayment of five percent (5%) or more, you shall reimburse us for the cost of such audit.

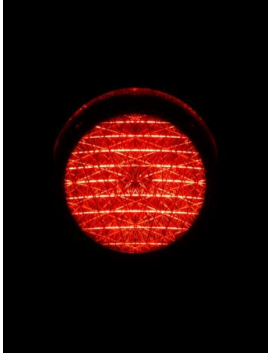


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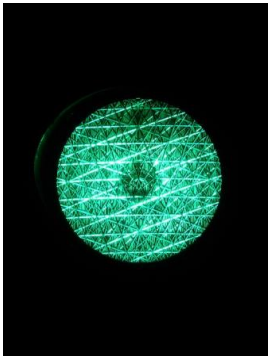
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Data Ownership and Usage



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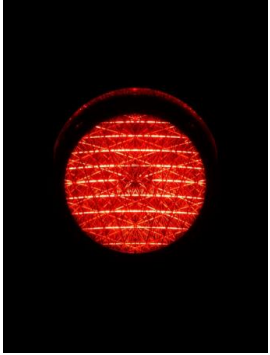


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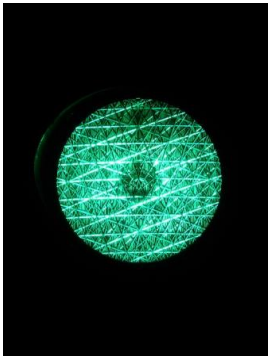
Backups & Security



Backups & Security



We are committed to keeping your data safe and secure and will return your Data to you upon the termination of this Agreement.

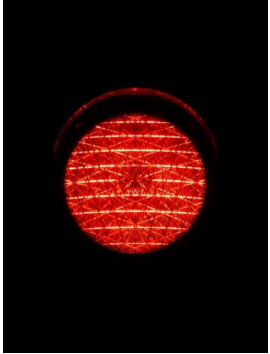


We will send you all your Data in an agreed-upon format at no charge upon termination of this Agreement. All copies, including backup copies, of your Data that are hosted by us will be backed up on a continual basis and stored in secure facilities according to industry standards. Backups of your Data will be provided to you in industry-standard formats on a quarterly basis (every third month). All of your Data hosted by us or our subsidiaries or agents will be destroyed within 30 days of the termination of this Agreement and the successful transfer of all your Data to you.

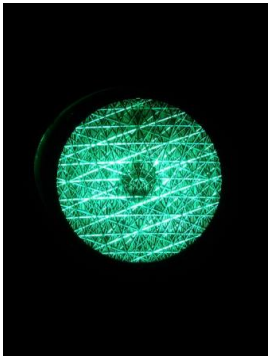
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User Privacy



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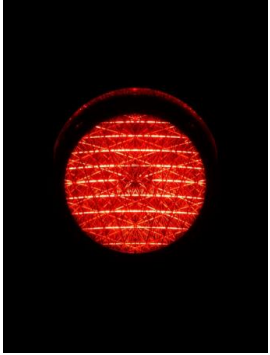


We will not disclose client information to third parties, without your express permission or as required by law. We may require Licensed Users to accept a click-through agreement; if so, this Agreement will supersede the provisions of any such clickwrap. See Section 5 for our FERPA and HIPAA declarations.

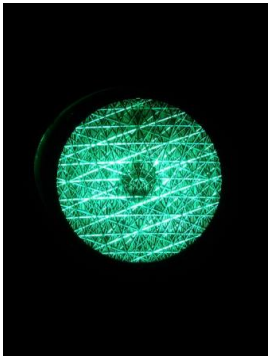
Transfer of Title



Transfer of Title



Title to Products shall pass to Customer on payment in full.

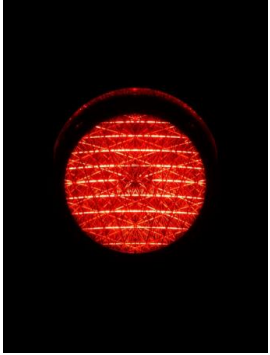


Title to Products shall pass to Customer on receipt and acceptance by Customer of the Products in agreed-upon condition and working order.

Nondisparagement

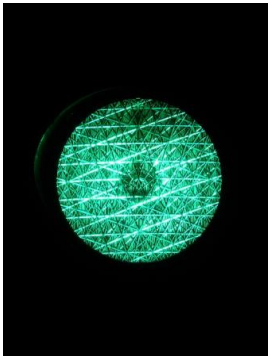


Nondisparagement



The Organization retains all rights to prosecute, to the fullest extent of the law, any use of its Works in a manner that falsifies, misrepresents, disparages or fraudulently uses the Works, or disparages or harms the reputation of the Organization.

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Wrapping Up





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